NO. 76-1629

JUL 22 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, Petitioner

-vs-

ANTHONY ROBERT WHEELER

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent, Anthony Robert Wheeler, pursuant to Rule 53, Supreme Court Rules, and Title 18 U.S.C. §3006A(d)(6), respectfully moves this Honorable Court for leave to file the attached Memorandum of the Respondent in Opposition to the Petition of the United States of America for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without pre-payment of costs and to proceed in forma pauperis. Counsel undersigned was appointed to represent the respondent in the District Court and on appeal to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted: July 20, 1977.

TOM O'TOOLE
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Telephone: (FTS: 261-3561)

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MEMORANDUM OF THE RESPONDENT IN OPPOSITION

TOM O'TOOLE
Federal Public Defender
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MEMORANDUM OF THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit is United States v. Wheeler, 545 F.2d 1255 (9th Cir., 1976). It is also Appendix A of the government's Petition.

QUESTIONS PRESENTED

Whether the Double Jeopardy clause of the Fifth Amendment bars federal prosecution of an Indian defendant for violation of the Major Crimes Act (18 U.S.C. 1153) because of his earlier conviction in Indian tribal court of a lesser included offense arising from the same acts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The respondent adopts the Constitutional and Statutory Provisions cited by the government in its petition (Pet. 2-3). Also involved in this case is the

Tenth Amendment to the Constitution of the United States:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

REASONS FOR DENYING THE PETITION

A. INDIAN TRIBES ARE NOT STATES

As this Court observed in Abbate v. United States, 359 U.S. 187 (1959), State courts obtain their general sovereign powers to govern and to make acts criminal from the Tenth Amendment. Id., 193. The Tenth Amendment provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The dual sovereignty exception to the Double Jeopardy guarantee has been recognized by this Court to be applicable only in the federal-state context. This is supported by both Grafton v. United States, 206 U.S. 333 (1907), where this Court prohibited the prosecution in a United States territorial court of a defendant who has been tried for the same acts in a federal military court and by Waller v. Florida, 397 U.S. 387 (1970), where dual prosecutions in municipal and State courts were prohibited. Both Waller and Grafton reason that dual prosecution is prohibited under the Double Jeopardy guarantee because the defendants are subjected to successive trials in courts of a single sovereign. Waller v. Florida, pp. 394-395, supra; Grafton v. United States, pp. 352, 354-355, supra.

One of the more striking and analogous examples of the limited state-federal application of the dual sovereignty exception to the Double Jeopardy guarantee is the refusal of this Court to apply it to the Commonwealth of Puerto Rico, Puerto Rico v. Shell Co., 302 U.S. 253 (1937), which has a "... degree of autonomy and independence normally associated with States of the Union ..." Examining Board of Engineers, Architects and Surveyors v. Flores de Otero, 426 U.S. 572, 594 (1976). In Puerto Rico v. Shell Co., supra, this Court held that the Sherman Anti-Trust Act did not preclude Puerto Rico from adopting and enforcing their own anti-trust laws. The Court rejected the argument that such legislation would be contrary to the Double Jeopardy clause for the reason that both Puerto Rican and federal courts are "creations emanating from the same sovereignty". 302 U.S. at 264. Viewing the dual sovereignty exception in this context, the Court of Appeals was correct in refusing to extend the doctrine to Indian tribes because "Indian tribes are not States". United States v. Wheeler, 545 F.2d 1255, 1258 (9th Cir., 1976); Petition, Appendix A. 1/

The few cases that turn on this issue support the Court of Appeals conclusion that the dual sovereignty doctrine does not apply to tribal-federal court prosecutions and that it is given only narrow application. 2/ See United States v. LaPlant, 156 F.Supp. 660 (D.C. Mont., 1957), where a motion to dismiss was granted by the District Court for the reason

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1/ The concept that Indian tribes are analogous to territories and that punishment of an Indian under tribal law bars the subsequent prosecution in the federal court has also been recognized by the United States Department of Interior in its publication Federal Indian Law (1958): "In effect, then, an Indian tribe bears a relation to the Government of the United States similar to that which a Territory bears to such Government, and similar again to that relationship which a municipality bears to a State." (p. 450).

2/ This Court's decision in Abbate v. United States, supra, and the companion case of Bartkus v. Illinois, 359 U.S. 121 (1959) were the subject of vigorous dissenting opinions. In Bartkus, Mr. Justice Black, after tracing the history of the Double Jeopardy clause and stressing the unfairness of multiple trials for the same acts, stated that, "[w]e should, therefore, be suspicious of any supposed 'requirements' of 'federalism' which resulted in obliterating ancient safeguards." 359 U.S. at 155.

that the defendant would be placed in double jeopardy if prosecuted for the included offense of simple assault in the United States Commissioner's Court after being convicted in tribal court of assault and battery arising out of the same incident, and Colliflower v. Garland, 342 F.2d 369 (9th Cir., 1965), cited with approval in Wheeler, p. 1258, supra, where the Court, after a thorough review of the history of tribal courts, observed that the theory of independent tribal sovereignty was a "pure fiction" and that the tribal court was, at least in substantial part, a creature and arm of the federal government. Id., 378-379. But see dicta in United States v. Kills Plenty, 466 F.2d 240 (8th Cir., 1972), that tribes are not arms of the federal sovereign.

That there are few cases squarely dealing with the issue of dual tribal-federal court prosecution infers that the issue is settled and negates the petitioner's claim that failure to apply the dual sovereignty exception to tribal-federal court prosecutions will result in "... the serious impairment of federal prosecutorial authority ...", or cause the "... severe curtailment of the jurisdiction of tribal courts ..." (Pet. 10) 3/

The Court of Appeals was therefore correct when it stated that this Court:

> "... has construed its 'dual sovereignty' rationale narrowly and has never applied it outside of the federal court or state court context ... [and that] Indian tribes are not states". United States v. Wheeler, 545 F.2d at 125, 1258.

3/ See the thorough and correctly reasoned dissent in United States v. Kills Plenty, 466 F.2d at 244-248, which rejects the government's contention that tribal courts are arms of separate sovereigns and are therefore analogous to State and federal courts.

B. TRIBAL AND FEDERAL COURTS ARE ARMS OF THE SAME SOVEREIGN

Contrary to the petitioner's urging, tribal courts are an "arm of the federal sovereign" (Pet. 15) and tribal self government is not derived from an "unextinguished residuum of the tribe's ancient sovereignty". (Pet. 11). Indian tribes do not exist in the general and territorial sense like States and have no inherent title to their lands. Instead, the tribes exist only to effect the intent of Congress that they be allowed to maintain their tribal integrity and identity through Congressionally sustained self government. As this Court recognized in Johnson v. McIntosh, 21 U.S. 543, 573-574, 587-588 (1823) and Cherokee Nation v. Georgia, 30 U.S. 1, 16-17 (1831), the international law doctrines of discovery, conquest, session, treaties and history support the conclusion that the United States obtained title to the continent, that the United States has the sole right to eliminate Indian occupancy either by purchase or by conquest and that such title is not subject to judicial review. 21 U.S. at 587-589. As such, Indian tribes exist only by virtue of the laws and treaties of the United States -- having no inherent right of self government and no absolute or aboriginal title to their lands in the absence of Congressional approval. See United States v. Kills Plenty, (Heaney, J., dissenting) pp. 244-248, supra. 4/

In Winton v. Amos, 255 U.S. 373, 391 (1921), this Court recognized that the federal government has plenary powers over tribal courts. At page 17 of its Petition the government recognizes that Congress has plenary powers over

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4/ Martone, American Indian Tribal Self-Government in the Federal System: Inherent Right or Congressional License?, 51 Notre Dame Law. 600, 625-626. This definitive article traces the history of Indian tribes and concludes that they are not inherently sovereign.

Indian tribes. Yet at page 7 of the Petition it makes the apparently inconsistent argument that "federal authorities [Congress] would be virtually powerless" to remedy the possibility of large numbers of Indians avoiding federal court Major Crimes Act prosecution by subjecting themselves to prosecution in tribal court for a lesser offense. That this plenary power is pervasive and includes tribal courts is evident from a review of Title 25 of the United States Code. Under 25 U.S.C. §476, the very power of Indian tribes to adopt a constitution and by-laws is created. Under 25 U.S.C. §636, the Navajo Tribal Constitution is authorized. Under both statutes the tribes are required to obtain approval from the Secretary of the Interior of its constitution and subsequent amendments thereto. The Navajo Tribal Code under which the respondent was prosecuted for disorderly conduct was adopted by the tribe under the authority of 25 CFR §11.1(e), which requires the specific approval of the Secretary of the Interior. Under 25 U.S.C. §477, the Secretary of the Interior is also authorized to issue corporate charters to various tribes; under 25 U.S.C. §13, Congress authorizes the B.I.A. to expend money for the employment of Indian police and judges; and under 25 U.S.C. §200, a tribe is required to report to the superintendent of the reservation whenever an Indian is incarcerated on the reservation. 5/

That Congress has paramount and complete authority to deal with Indian tribes was again recognized in 1871, when

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5/ In addition, although the petitioner notes that Indian tribes are treated in the United States Constitution in pari materiae with States and foreign nations, Article I, Section 8, Clause 3 of the Constitution (Pet. 10), in 1831 it was recognized that Indian tribes are not to be treated as foreign nations. Cherokee Nation v. Georgia, p. 18, supra. See also Montoya v. United States, 180 U.S. 261 (1901) ("The North American Indians do not and never have constituted 'nations' ..." Id., 265).

the Congress unilaterally changed Indian policy:

> "Hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty ..." (25 U.S.C. §71; originally 16 Statute 544 (1871).

In 1890, shortly after this Court said in United States v. Kagama, 118 U.S. 375 (1886), that there are only two sovereign entities within the United States, the federal government and the States, Id. 379, the Court rejected a tribal claim that it was sovereign and that Congress therefore had no power to take tribal land by eminent domain. The Court said:

> "The proposition that the Cherokee Nation is sovereign in the sense that the United States is sovereign, or in the sense that the several States are sovereign, and that the nation alone can exercise the power of eminent domain within its limits, finds no support in the numerous treaties with the Cherokee Indians, or in the decisions of this Court, or in the acts of Congress defining the relations of that people with the United States." Cherokee Nation v. Southern Kansas Railway Co., 135 U.S. 641, 653 (1890).

The Court also noted that members of Indian tribes were "wards of the United States, and directly subject to its political control". Id., 647.

The petitioner incorrectly relies on Talton v. Mayes, 163 U.S. 376 (1896) as an example of the broad inherent sovereignty of tribes which therefore makes them analogous to States. In Talton, the Court held that a five man tribal grand jury could properly indict a tribal member for murder occurring on the reservation since the Bill of Rights and the Fifth Amendment acted as a limitation only on the powers of the federal government, not those of the States or Indian tribes. In view of the subsequent enactment of the Indian Civil Rights Act of 1968, 25 U.S.C. §1301 et seq.,

subjecting tribal members to nearly all of the restrictions of the Bill of Rights that are imposed upon federal and state governments, this argument must fail. In addition, it is significant to note that in Talton the Court dispelled the petitioner's analogy of State and tribal sovereignty when it stated:

> "By treaties and statutes of the United States the right of the Cherokee nation to exist as an autonomous body, subject always to the paramount authority of the United States, has been recognized." Id., 379-380 (Emphasis added)

The petitioner is therefore incorrect in urging (Pet. 15) that the dicta of Talton supports the proposition that tribal autonomy is presently substantial because the Fifth Amendment to the Constitution does not apply to tribal judicial proceedings.

A review of this Court's recent treatment of tax disputes between the States and Indian tribes shows that the concept of Indian tribes as separate, although dependant nations, is no longer viable. In McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973), the Court observed that the Indian sovereignty doctrine first advanced in Worcester v. Georgia, 6 Pet. 515, 557 (1832), as a barrier to the "... State's efforts to extend its criminal jurisdiction to reservation lands ..." was also the same doctrine and rationale that had previously been applied to restrict "... state taxation within the reservation ...", McClanahan, p. 169, supra. However, the Court then recognized that Indian tribes are still:

> "... a 'people distinct from others' ... [only] ... [i]f the tribal organization ... is preserved intact, and [is first] recognized by the political department of the government as existing ... [and that tribes are] ... to be governed exclusively by the government of the Union". Id., 169

The Court noted that:

> "[t]he [tribal sovereignty] doctrine has undergone considerable evolution ..." Id., 171 [and]
>
> ... the modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and look instead to the applicable treaties and statutes which define the limits of state power." Id., 172.

Instead of relying on the notion of tribal sovereignty as a source of federal authority over Indian matters, the Court instead invoked the federal pre-emption doctrine 6/ and resolved the dispute by examination of the relevant treaties and statutes. The Court noted that:

> "[t]he extent of federal pre-emption and residual Indian sovereignty in a total absence of federal treaty obligations of legislation is therefore now something of a moot question. (citations omitted)." Id., 172, n. 8 (Emphasis added)

It is also significant that in McClanahan this Court recognized that the Navajo Tribe, in whose court the respondent was prosecuted, exists not as a sovereignty but only as an instrument and creation of the United States Government. In reviewing the 1868 treaty between the Navajos and the federal government this Court noted that:

> "... the document is not to be read as an ordinary contract agreed upon by parties dealing at arm's length with equal bargaining positions." Id., 174.

The Court then quoted from the Arizona Enabling Act, 36 Statute 569, which states that the tribe and its lands, until extinguished:

> "... shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." Id., 175.

6/ See Oliphant v. Schlie, p. 1015, cited at page 12 infra, and authorities cited therein discussing the application of the pre-emption doctrine to Indian tribes.

Implicit in the Court's holding was the recognition that the federal government has paramount and exclusive control of the Indian tribes and that the inherent sovereignty doctrine was in the past used only to resolve State-tribal disputes. Contrary to the petitioner's contention, this Court has always recognized that tribes are "instrumentalities of the federal government". (Pet. 13).

In Keeble v. United States, 412 U.S. 205 (1973), this Court again minimized the government's claim, similar to petitioner's contention in this case (Pet. 15), that under the teaching of Worcester v. Georgia, 6 Pet. 515 (1832), Ex Parte Crow Dog, 109 U.S. 556 (1883) and Talton v. Mayes, 163 U.S. 376 (1896), Indian tribes possess inherent exclusive jurisdiction to punish tribal criminal violations and therefo

> "[t]he interests of an individual Indian defendant in obtaining a jury instruction on a lesser included offense must fall before the Congressionally sanctioned interests of the tribe in preserving its inherent jurisdiction." Id., 209.

The Court noted that in 1885, when it enacted the Major Crimes Act, Title 18 U.S.C. §1153 and 3242, Congress rejected this doctrine as being "either non-existent or incompatible with principles that Congress thought should be controlling". Id., 210. Instead of this doctrine, the Court relied on the language, purpose and legislative history of the Act in holding that an Indian prosecuted under the Act is entitled to a lesser included offense instruction though such an offense is not found in the United States Code. Id., 210-214.

The petitioner's reliance on United States v. Mazurie, 419 U.S. 544 (1975) (Pet. 11-12), in support of its argument that Indian tribes are sovereigns in the state-federal sense again reflects an incorrect view and misleading application of the notion of inherent tribal sovereignty. In Mazurie, this Court held that under Article I, Section 8(3)

of the Constitution, and under the Congressional definition of "Indian Country", Title 18 U.S.C. §1154, Congress, not Indian tribes, has the inherent and complete power to control the sale of alcoholic beverages within Indian Country; Indian tribes are entities only in the sense that they have been delegated authority by Congress to control their internal affairs. Id., 553-557. Although the Court recognized that tribes have "attributes of sovereignty" and "possess a certain degree of independent authority over matters that affect the internal social relations of tribal life", Id., 557, it nevertheless refrained from reliance on any broad concept of inherent independent authority of the tribe over its internal affairs:

> "[w]e need not decide whether this independent authority is itself sufficient for the tribes to impose Ordinance Number 26 [requiring a state and tribal license to sell liquor within Indian Country]". 419 U.S. at 557.

A comparison of the definition of the separate sovereign concept of Indian tribal courts applied by the Ninth Circuit in Oliphant v. Schlie, 544 F.2d 1007 (9th Cir., 1976), cert. granted sub nom. Oliphant v. The Squamish Indian Tribe, et al., ___ U.S. ___ (No. 76-5729, June 13, 1977), and in this case supports the conclusion that the definition applied in Oliphant is different from that rejected by the Ninth Circuit and urged by the petitioner in this case. In Oliphant, the Ninth Circuit said that inherent tribal sovereignty exists only as it pertains to internal tribal affairs and only to the extent that it has not been pre-empted or eliminated by federal treaty, statute, policy or tribal law pertaining to the tribe at issue. 544 F.2d at 1010-1014. However, in this case the petitioner urges application of a concept of inherent sovereignty analogous to the sovereignty enjoyed by states under the Tenth Amendment. The petitioner

applies to all Indian tribes regardless of limitations imposed by applicable treaties, statutes and tribal laws. The petitioner fails to recognize that in Oliphant and this case the Ninth Circuit was dealing with significantly different definitions and applications of the concept of inherent tribal sovereignty. Any inconsistency in decisions of the Ninth Circuit merely flows from the failure of the Court in Wheeler to point out that Oliphant involved an entirely different issue. 7/

C. THE DOUBLE JEOPARDY GUARANTEE BARS DUAL PROSECUTION OF A GREATER OFFENSE AND A LESSER INCLUDED OFFENSE IN COURTS OF THE SAME SOVEREIGN.

Petitioner did not have the benefit of this Court's recent decisions in Jeffers v. United States, ___ U.S. ___ (No. 75-1805, June 16, 1977) and Brown v. Ohio, ___ U.S. ___ (No. 75-6933), June 16, 1977, when it filed its petition. These cases, as well as Waller v. Florida, supra, soundly reject the claim of the petitioner that:

> "... it does not violate the Double Jeopardy Clause to prosecute a defendant for a greater offense after having successfully prosecuted him on a lesser included offense, so long as he was not in jeopardy of the greater offense at the first trial and is not placed in jeopardy again on the lesser included offense at the second trial. See Diaz v. United States, 223 U.S. 442, 449." (Pet. 20)

7/ In Oliphant, the dissent concluded that a presumption in favor of inherent tribal sovereignty no longer exists. 544 F.2d at 1019. Based upon an absence of any cases on the issue for over 100 years and from a thorough review of Congressional action and the legislative history of federal criminal laws pertaining to Indians, the dissent stated that the concept of tribal sovereignty is used only in "... determining the extent to which states can properly exercise jurisdiction where the federal government has decreed a measure of autonomy for the tribes. Martone, American Indian Tribal Self Government in the Federal System: Inherent Right or Congressional License?, 51 Notre Dame Law. 600, 627 (1976). The term 'sovereignty,' then, is merely a veil used where the issue is, in fact, one of federal preemption of regulation in the field of Indian affairs. Id., at 629-31; See McClanahan v. Arizona State Tax Commission (citations omitted)." 544 F.2d at 1015.

In Brown, this Court recognized that Double Jeopardy bars dual prosecution for greater and lesser included offenses, no matter which prosecution first occurs. Brown v. Ohio, slip op. p. 7-8. The Court then distinguished Diaz v. United States, supra, from the facts of this case when it said:

> "An exception [to the Double Jeopardy guarantee] may exist where the State is unable to proceed on the more serious charge at the outset [of the trial on the lesser charge] because the additional facts necessary to sustain that charge have not occurred or have not been discovered despite the exercise of due diligence. See Diaz v. United States, 223 U.S. 442, 448-449 (1912); Ash v. Swenson, 397 U.S. 436, 453, n. 7 (1970) (Brennan, J. concurring)." Brown v. Ohio, slip op. p. 8, n. 7, supra. See also Jeffers v. United States, slip op. p. 13, supra.

Unlike Diaz, there is no evidence in this case that the government lacked facts necessary to sustain the lesser charge when the respondent was prosecuted on the greater charge. Assuming arguendo that the Diaz exception does apply to this case its availability to the government is an additional reason for rejecting the government's claim that the dual prosecution exception to the Double Jeopardy guarantee should be applied to tribal-federal court prosecutions.

The government's argument must also fail in view of this Court's holding in Waller v. Florida, supra, that because they are the same sovereign, prosecution in a municipal court bars prosecution in a state court for the same conduct. Waller implicitly rejects the petitioner's claim (Pet. 19-20) that merely because the respondent could not be put in jeopardy in the tribal court for the same offense (statutory rape) or in the federal court for the same tribal violation (contributing to the delinquency of a minor) an exception to the Double Jeopardy guarantee exists.

The petitioner is also incorrect in claiming that the District Court "... lack[s] independent jurisdiction over the [contributing to the delinquency of a minor] offense ... [and only] ... if the defendant requested such a charge upon the authority of Keeble v. United States [412 U.S. 205] ..." (Pet. 21, n 17) could the charge be considered in the District Court. As this Court noted in Keeble, whereit authorized the District Court to give a state lesser included offense instruction because such a violation did exist in the United States Code, under the principal of mutuality both the federal prosecutor and the defendant are entitled to a lesser included offense instruction where the evidence warrants such an instruction. In other words, each party is entitled to ask for it. Keeble v. United States, 412 U.S. 205 at 208, 214, n. 14. Accordingly, the petitioner's claim that the "respondent would not again be in jeopardy for the tribal offense during his federal trial, since the federal court has no jurisdiction over offenses listed in the Navajo Tribal Code" must fail. (Pet. 21). 8/

8/ This argument was criticized when it was raised in the state-federal dual prosecution context. In Abbate v. United States, supra, Mr. Justice Black dissented and said: "The Court today seems to rely on the argument, also made in Lanza, 260 U.S., at 385, that failure to allow federal prosecutions after state [tribal] trials might endanger federal law. States [tribes], the argument runs, might estal lish minor punishments for conduct which violates United States Statutes. Criminals could then plead guilty in State [tribal] courts and be safe from federal justice ... As we pointed out in Bartkus v. Illinois, ante, p. 150 (dissenting opinion), if Congress has power to make certain conduct a federal crime, it also has power to protect the national intereest. It can take exclusive jurisdiction over the crime/or, if it wishes to allow the States [Indian tribes] concurrent power, it can define the offense and set minimum penalties which would be applicable in both State [tribal] and federal courts. In addition, should the State [tribal] trial prove to be a sham, it might be that no jeopardy could be shown and that a subsequent federal trial would be constitutiona. (citations omitted). It therefore appears that federal laws can easily be safeguarded without requiring defendants to undergo double prosecutions." 359 U.S. at 202-203, n. 2.

-15-

CONCLUSION

The petition for a writ of certiorari should be denied. To extend the dual sovereignty rationale adopted by this Court in the federal-state context, Abbate v. United States, supra, to the tribal-federal context is unsupported by either history, treaties, statutes or case law. The proper remedy, should such a problem actually exist, is legislative and not judicial.

Respectfully submitted: July 20, 1977.

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AFFIDAVIT OF SERVICE

TOM O'TOOLE, being first duly sworn, deposes and says:

That in accordance with Rule 33(2)(a), Supreme Court Rules, he has served a copy of the following documents on the United States Attorney for the District of Arizona, Phoenix, Arizona, and has forwarded by air mail a copy of the same documents to the Solicitor General, Department of Justice, Washington, D.C. 20530, on this 20th day of July, 1977:

(1) Motion for Leave to Proceed in Forma Pauperis;
(2) Memorandum of the Respondent in Opposition; and
(3) Affidavit of Service.

Tom O'Toole
TOM O'TOOLE
Federal Public Defender
District of Arizona

SUBSCRIBED AND SWORN to before me this 20th day of July, 1977.

Marcia D. Gruskin
Notary Public

My Commission Expires:
June 14, 1981

-17-